

Remarks

The Office action mailed July 10, 2006 rejected Claim 55 as unpatentable over Hillier *et al.* (“Hillier”). In the Examiner’s opinion, it would have been obvious to one of ordinary skill in the art to modify Hillier to produce the Applicant’s claimed invention. Reconsideration and allowance is respectfully requested in view of the following remarks.

As the Examiner is aware, a prior art reference used as the basis for an obviousness rejection must teach or suggest all of the claim limitations of the allegedly obvious invention. MPEP 2143. Also, the case of obviousness must include evidence showing a suggestion or motivation to modify the reference to produce the allegedly obvious invention. In re Kotzab, 217 F.3d 1365, 55 USPQ2d 1313 (Fed. Cir. 2000) (“Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp., 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996).”)

Applicant claims generating only a portion of a number of schedule permutations required to produce an optimal schedule of a plurality of tasks to be scheduled using an enumerative brute force method and estimating an amount of time required to generate a number of schedule permutations required to produce the optimal schedule from the amount of time used to generate the portion of the number of schedule permutations. Hillier teaches that using exhaustive enumeration is appropriate where there are only four relevant policies. Pg. 839. According to Hillier, “[M]any applications have so many policies that this approach would be completely infeasible. For such cases, algorithms that can efficiently find an optimal policy are needed.” So Hillier teaches alternative algorithms that are available for larger problems. *Id.*

Hillier does not address the issue of determining whether a particular problem can be solved using exhaustive enumeration given a particular time constraint. Thus, Hillier does not teach or suggest the applicant's claimed invention.

The Examiner tries to bridge the gap between Hillier and the Applicant's claimed invention by asserting that "it would have been obvious to enter or estimate which algorithm of Hillier *et al.* to use based on time and memory space requirements in order to more efficiently find an optimal solution using the most appropriate means." But Applicant respectfully argues that this fails to provide objective evidence bearing on the obviousness of the applicant's specifically elucidated process for determining which of several alternative algorithms to employ to solve a scheduling problem. Furthermore, despite any motivation to be more efficient or use appropriate means, one of ordinary skill would have no reason arising from Hillier to apply the applicant's claimed method. Therefore, the Patent Office has failed to establish a legal case of obviousness with respect to the applicant's claimed invention.

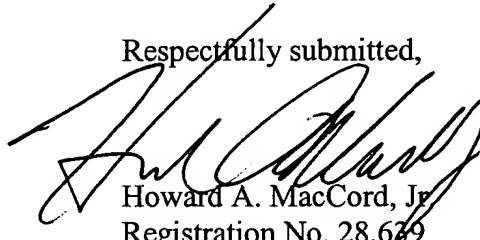
The Applicant also claims generating only a portion of a number of schedule permutations required to produce a schedule of tasks using a deterministic programming method and estimating an amount of time required to generate the schedule of the plurality of tasks to be scheduled using the deterministic programming method based on the amount of time required to schedule the portion of the plurality of tasks using the deterministic programming method. The Examiner characterized the Applicant's claims as "entering or estimating based on time or memory space requirements" and does not seem to consider the specific steps Applicant's claim provides for doing so.

Specifically, Hillier teaches that, for a particular smaller problem, using the simplex method of linear programming yields "the same optimal policy found by exhaustive

enumeration,” but that linear programming “can be used to solve vastly larger problems.” Page 843. Hillier is not concerned with determining whether, given a certain problem size, time and memory constraint, deterministic programming can be used to solve the problem within those constraints. Thus, Hillier does not teach or suggest the inventions described by Applicant’s claim.

Therefore, it is submitted that, by this amendment, this case is in condition for allowance and such action is respectfully requested. However, if any minor issue remains unresolved, a telephone interview to expedite allowance and issue is requested.

Respectfully submitted,



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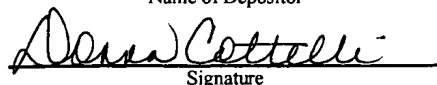
Date: October 10, 2006
File No.: 4675-008

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